

REMARKS

The examiner withdrew the rejections under 35 U.S.C. 112, 2nd paragraph and the statutory type double patenting rejection under 35 U.S.C. 101.

Obvious type Double Patenting

The examiner maintained the provisional rejection of Claims 1 -32 under the judicially created doctrine of obviousness-type double patenting, as being unpatentable over claims 1, 3-4, 6-8, 12-15, 17, and 26-27 of co-pending Application No. US 2002/0035683 A1 ('683). The examiner stated:

Although the conflicting claims are not identical, they are not patentably distinct from each other because, the monitoring devices and/or probe or plurality of probes devices are monitors that are statistical collectors in both applications. Similarly, the cluster heads are in fact the controllers/centers for the monitor/probes in both applications. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of US application '683, by labeling the cluster heads as controllers/centers, and the probe devices/monitors as statistical collectors/monitors as recited in the disclosure. One of ordinary skill in the art would have been motivated to perform such a modification because it involves only the aspect of labeling the functions of the device and not modifying its structure. One of ordinary skill in the art would have seen this as an obvious expedient to renaming the function of the device/apparatus/system, while retaining the original functions. The specifics may be found in the prior office action. This obviousness type of rejection is being maintained.

For the record, Applicant contends that the examiner is in error. Initially, the examiner reasons that: "the monitoring devices and/or probe or plurality of probes devices are monitors that are statistical collectors in both applications." Applicant does not disagree with this statement, however claim 1 requires that the plurality of probe devices ... coupled to links that couple the network to the data center Neither the '683 claims nor the '683 specification is it suggested to place monitoring devices on links that couple the network to the data center While each of the probes (instant case) and monitors ('683) indeed collect statistical data on network traffic, they collect different data because of their different connections in a network.

Applicant had compared the apparatus claims of the instant invention with the method claims of '683, because the examiner appeared to make that comparison. In any event, neither

apparatus claims nor the method claims of the instant case are obvious in view of the apparatus or method claims of the '683 application.

Applicant disagrees with the examiner's position that corresponding elements have been renamed, since the recitations of links that are coupled to networks explicitly recites a configuration limitation, and it is not necessary to explicitly recite a direct coupling of the probes to the links that couple to the data center.

Applicant contends that the examiner's statement that: "All devices and components and/or subcomponents of a computer system are connected, either through hardware, software, firmware or some other interfacing means; as such it does not serve to distinguish.", since it is not correct to say that just because a plurality of devices are in a network that they are somehow all coupled to each other.

Moreover, the claim requires more namely: "a plurality of probe devices that are coupled to links that couple the network to the data center and collect statistical information on packets that are sent over the links that couple the network to the data center." The '683 application neither claims nor discloses to: "collect statistical information on packets that are sent over the links that couple the network to the data center."

Nevertheless in order to advance prosecution, Applicant has enclosed herewith a terminal disclaimer.

Therefore, in view of the indication of allowable subject matter and the resolution of all outstanding rejections allowance of the application is in order.

Canceled claims, if any, have been canceled without prejudice or disclaimer.

Any circumstance in which the applicant has addressed certain comments of the examiner does not mean that the applicant concedes other comments of the examiner. Any circumstance in which the applicant has made arguments for the patentability of some claims does not mean that there are not other good reasons for patentability of those claims and other claims. Any circumstance in which the applicant has amended or canceled a claim does not mean that the applicant concedes any of the examiner's positions with respect to that claim or other claims.

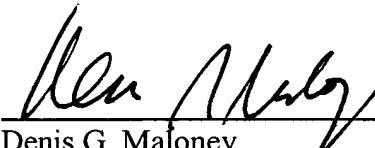
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Page : 4 of 4

Attorney's Docket No.: 12221-011001

Enclosed is a **\$225** check for the Petition for Extension of Time fee. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: 12/21/06



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